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In The

Supreme Court of the United States

October Term, 1959

No. 795

IN RE: ESTATE OF JOHN S. CHOJNACKI,
AN INCOMPETENT

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA

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To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Petitioner, Commonwealth of Pennsylvania, respectfully prays that a writ of certiorari issue to review the judgment of the Supreme Court of Pennsylvania entered in the above entitled case on December 30, 1959.

CITATIONS TO OPINIONS BELOW

The opinion of the Orphans' Court of Erie County is reported at 41 Erie County Legal Journal 243 (1958). The opinion of the Supreme Court of Pennsylvania printed in Appendix A hereto, infra p. 16, is reported at 397 Pa. 596.

JURISDICTION

The judgment of the Supreme Court of Pennsylvania was entered on December 30, 1959. A notice of intention to file petition for certiorari and praecipe for certification of record and a petition for supplemental certiorari were duly filed with the Supreme Court of Pennsylvania and on February 13, 1960, the order of the Supreme Court of Pennsylvania was entered directing its Prothonotary to issue a supplemental certiorari to have the record returned by the Orphans' Court of Erie County to the Supreme Court of Pennsylvania and to retain such record until the petition of the Commonwealth of Pennsylvania for a certiorari and the appeal which may be granted thereon be passed upon by the Supreme Court of the United States.

The jurisdiction of this Court is invoked under 28 U.S.C. 1257(3).

QUESTIONS PRESENTED

1. Does federal law vest the Veterans' Administration with responsibility and discretion for determining the portion of an incompetent veteran's pension in the hands of his state-court-appointed guardian which may be used or paid on account of his maintenance at a state mental institution?

2. Does federal law granting an exemption in favor of a veteran apply to a claim for care and support furnished to an incompetent veteran by the state while such veteran is confined to a state mental institution under state-court-appointed guardianship?

STATUTES INVOLVED

Section 1 of the Act of June 1, 1915, P. L. 661, 71 Purdon's Pennsylvania Statutes Annotated 1781, provides:

> "Whenever any person is maintained as an inmate of any hospital, home, sanatorium, or other institution of the Commonwealth, in whole or in part at the expense of the Commonwealth, the property or estate of such person shall be liable for such maintenance, to be paid or recovered as hereinafter provided."

Section 701 of The Mental Health Act of 1951, the Act of June 12, 1951, P. L. 533, as amended, 50 Purdon's Pennsylvania Statutes Annotated 1361, provides in pertinent part:

> "* * * liability for all costs of care of any patient in any State institution is hereby imposed * * * against—
>
> "(1) The patient's real and personal property;"
>
> * * * * * * *

Section 1503(b)(3) of Title 15, Public Law 85-86, June 17, 1957, 71 Stat. 137, 38 U.S.C. 3203(b) provides:

> "(b) (1) Where any veteran having neither wife, child, nor dependent parent is being fur-

nished hospital treatment, institutional or domiciliary care by the Veterans' Administration, and is rated by the Veterans' Administration in accordance with regulations as being incompetent by reason of mental illness, the pension, compensation, or retirement pay of such veteran shall be subject to the provisions of subsection (a) of this section; however, no payment of a lump sum herein authorized shall be made until after the expiration of six months following a finding of competency.

"(2) In any case where the estate of such incompetent veteran derived from any source equals or exceeds $1,500, further payments of such benefits (except retired pay, but including emergency officers' retirement pay) shall not be made until the estate is reduced to $500. The amount which would be payable but for this subsection shall be paid to the veteran as provided for the lump sum in paragraph (1) of this subsection, but in the event of the veteran's death no part thereof shall be payable.

"(3) All or any part of the pension, compensation, or retirement pay payable on account of any incompetent veteran who is being furnished hospital treatment, institutional or domiciliary care may, in the discretion of the Administrator, be paid to the chief officer of the institution wherein the veteran is being furnished such treatment or care, to be properly accounted for by such chief officer and to be used for the benefit of the veteran."

Section 3101(a) of Title 38, 72 Stat. 1229 (1958), provides, inter alia:

> "(a) Payments of benefits * * * made to, or on account of, a beneficiary * * * shall be exempt from the claims of creditors, and shall not be liable to attachment, levy, or seizure by or under any legal or equitable process whatever, either before or after receipt by the beneficiary. Such provisions shall not attach to claims of the United States arising under such laws * * *"

STATEMENT OF THE CASE

The Commonwealth filed the instant Creditor's Petition for an Allowance to Cover Maintenance at State Institution, at No. 140 May Term, 1958, in the Orphans' Court of Erie County. The undisputed facts involved in this proceeding are as follows: John S. Chojnacki is a patient confined at Farview State Hospital, Waymart, Pennsylvania, and has been so confined since prior to May 5, 1957; on May 6, 1957, Joseph F. MacKrell, Esquire, was appointed guardian of the estate of such inmate; from the date of his appointment and until December 31, 1957, the guardian paid the full cost of the care and maintenance of the incompetent to the Commonwealth of Pennsylvania; from and after January 1, 1958, the guardian refused upon demand to pay the full cost of the maintenance of the incompetent; the guardian is in receipt of a Veterans' Administration pension in the amount of $78.75 per month; and the Veterans' Administration opposes payment by the guardian of more than $40.00 per month towards the cost of maintenance of the incompetent, although the full cost of maintenance is approximately $4.45 per day, or $138.00 per month. In the proceeding, the Orphans' Court of Erie County considered the question whether payment covering the Commonwealth's full cost of maintenance of the incompetent could be directed from Veterans' Administration pension funds in the hands of the guardian. The Orphans' Court, citing 38 U.S.C. §3203(b) (3), held that the Veterans' Administration,

> "* * * in the exercise of its discretion, is vested with the responsibility for determining the amount to be used or paid on account of his [Chojnacki's] maintenance. Here, the Veterans' Administration has determined that no more than $40.00 per month shall be so used. The determination of the portion of the monthly gratuity to be used for the pensioner's maintenance is exclusively a federal matter, and when properly made by the Veterans Administration, is binding upon all concerned."

Accordingly, the Orphans' Court by order dated August 12, 1958, dismissed the Commonwealth's petition and decreed that the guardian pay to the Commonwealth from pension funds in his hands not more than $40.00 per month on account of the maintenance of John S. Chojnacki, in accordance with instructions issued by the Veterans' Administration.

The Commonwealth appealed from such order and in a decision filed on December 30, 1959, the Supreme Court of Pennsylvania, per curiam, affirmed the order of the lower court upon portions of the opinion of the lower court, including the portion quoted immediately above.

The federal questions sought to be reviewed first arose when the Orphans' Court of Erie County, in deciding the case against petitioner, relied upon and misapplied section 3203(b) (3) of Title 38 U.S.C., without oral or written argument first being heard or received on the section and its applicability to the facts of the case. On appeal to the Supreme Court of Pennsylvania, the federal questions here presented were raised and argued by petitioner.

REASONS FOR GRANTING WRIT

This case involves a state court's determination of a substantial federal question not heretofore determined by this Court. Petitioner contends that the Supreme Court of Pennsylvania misunderstood and misinterpreted federal statutes limiting the exercise of discretion by the Veterans' Administration and prescribing the extent to which property of an incompetent veteran is subject to the claim of a state as a creditor. The decision of the Supreme Court of Pennsylvania is in conflict with the long established rule adhered to by four other states.

ARGUMENT

Petitioner submits that the Supreme Court of Pennsylvania misunderstood and misinterpreted section 3203(b)(3) of Title 38, U.S.C., 71 Stat. 137 (1957). The Supreme Court of Pennsylvania interpreted this section to vest the Veterans' Administration with responsibility for determining the amount of a veteran's pension which may be used or paid on account of his maintenance at a state institution. Petitioner contends that section 3203(b)(3) is totally inapplicable to the case at hand.

Subsection (a) of section 3203 of the federal act provides for reduction of payments and other consequences where "any veteran having neither wife, child, nor dependent parent is being furnished hospital treatment, institutional or domiciliary care *by the Veterans' Administration* * * *". (Emphasis supplied) Likewise, subsection (b) of section 3203, dealing with mentally ill veterans, relates to veterans who are being furnished with "hospital treatment, institutional or domiciliary care *by the Veterans' Administration* * * *". (Emphasis supplied) Paragraph 3 of section 3203(b), upon which the lower courts' holdings rest entirely, reads as follows:

> "All or any part of the pension, compensation, or retirement pay payable on account of any incompetent veteran who is being furnished hospital treatment, institutional or domiciliary care [by the Veterans' Administration] may, in the dis-

cretion of the Administrator, be paid to the chief officer of the institution wherein the veteran is being furnished such treatment or care, to be properly accounted for by such chief officer and to be used for the benefit of the veteran." (Words in brackets supplied for emphasis.)

It seems too plain for discussion that section 3203 (b)(3) deals only with cases of mentally ill veterans who are being furnished maintenance and care by the Veterans' Administration. Section 3203 contains no language at all which would indicate that Congress intended the section or any part thereof to apply to pension payments made to incompetent veterans cared for and maintained in state institutions. In the instant case the incompetent is maintained at a state institution, and it is submitted that the courts below erred in applying section 3203(b)(3) to authorize the Veterans' Administration to determine the portion of the incompetent's monthly pension which the guardian could pay for his support and maintenance, and in so doing to profess: "The determination of the portion of the monthly gratuity to be used for the pensioner's maintenance is exclusively a federal matter, and when properly made by the Veterans' Administration, is binding upon all concerned".

Reason supports this view. Where the federal government maintains a mentally ill veteran in a federal institution, the federal government is acting in a de facto guardianship capacity with respect to such veteran. It is most appropriate, reasonable and logical, therefore, that Congress would designate the Veterans' Administration, as an arm of the federal

government, to determine what part of the veteran's pension should be paid to the federal institution for care of the veteran. On the other hand, John S. Chojnacki has a state-court-appointed guardian whose duty it is to guard the property vigilantly and to provide for the care and maintenance of his ward. The guardian—not the Veterans' Administration—should determine the amount of pension to be applied for maintenance of his ward at the state institution. If Congress ever intended to usurp this function of a state guardian, it would have done so expressly and clearly. Section 3203(b)(3) fails to indicate an intent of Congress to have the federal government supersede and control the exercise of discretion of a state-court-appointed guardian.

In four states, in cases involving similar facts to the case at bar, the courts have held in favor of the state in granting allowances from the estates of incompetents to reimburse on account of maintenance provided the incompetents: *In re Murphy's Committee*, 227 App. Div. 839, 237 N.Y.S. 448 (1929); *In re Ferarazza's Estate*, 219 Cal. 668, 28 P. 2d 670 (1934); *In re Lewis' Estate*, 287 Mich. 179, 283 N.W. 21 (1938); *In re Bayly's Estate*, 95 Cal. App. 2d 174, 212 P. 2d 587 (1949), and *In re Bemowski's Guardianship*, 3 Wis. 2d 133, 88 N.W. 2d 22 (1958). In none of these cases did the guardian or the Veterans' Administration even raise the question of the applicability of section 3203(b)(3) of Title 38, U.S.C., to vest the Veterans' Administration with discretion to determine the amount of maintenance which the guardian could pay to the state institution. The question generally involved in these cases was whether the

state was barred completely from recovering any portion of maintenance costs on the ground that it was a "creditor" within Section 3101(a) of Title 38, U.S.C., 72 Stat. 1229 (1958), which provides inter alia:

> "Payments of benefits * * * made to, or on account of, a beneficiary * * * *shall be exempt from the claims of creditors*, and shall not be liable to attachment, levy, or seizure by or under any legal or equitable process whatever, either before or after receipt by the beneficiary. * * *"
>
> (Emphasis supplied)

The theory of the rule adopted in the other states was well expressed in the oft-quoted language of the Supreme Court of Michigan in *In re Lewis' Estate*, supra (287 Mich. at pages 186, 187, 283 N.W. at page 24):

> "We are not here concerned with actions by creditors seeking to turn the pension to satisfaction of their demands, but only with the question of reimbursement of the state for care and maintenance. *Certainly the pension protective law does not intend the fund for the welfare of the beneficiary and then, under restrictions thereof, after receipt by the beneficiary, prevent employment thereof for care and support of the pensioner.*
>
> "At the time the guardian of the pension beneficiary received the pension money she was a ward, not only of the probate court but, as well, upon her commitment for hospitalization, a ward of the state. The state asks no more than the

guardian was, in duty and of necessity, obligated to provide by way of support, care and maintenance of the ward.

"The state, under humanitarian legislation, has assumed the care and maintenance of the insane pension beneficiary and, by statute, has provided means and measures for reimbursement and we do not think that, under such circumstances, congress intended to consider the state in the class of barred creditors. *The exemption in the pension law serves its purpose in holding that in the hands of the guardian and under order of the court, of which the beneficiary is a ward, the money is not exempt from employment in reimbursing the state, under statutory provisions, for the expense of care and maintenance of the ward.*" (Emphasis Supplied)

Pennsylvania, on the contrary, by misapplying the provisions of Title 38 U.S.C. §3203(b)(3), varies from the otherwise unanimous rule of the other states of the union which have ruled on the same factual situation.

Finally, the refusal of the Veterans' Administration to apply a greater portion to maintenance and care, consistent with prudent management of the estate, is at variance with the decision of this Court in *Lawrence v. Shaw*, 300 U.S. 245, 81 L. Ed. 623, 57 S. Ct. 443 (1937), in which this Court considered the application of the exemption provided in section 3101 (a) of Title 38, U.S.C., to pension benefits of a veteran, which benefits were attempted to be subjected to tax, wherein Chief Justice Hughes stated: "*These payments are intended primarily for the maintenance and support of the veteran*". (Emphasis supplied)

CONCLUSION

It is respectfully submitted that the misinterpretation of federal law by the Supreme Court of Pennsylvania should be reviewed and corrected by this Court so that all states will thereafter apply the federal law uniformly and reach the same result on similar facts.

For the foregoing reasons, this petition for writ of certiorari should be granted.

Respectfully submitted,

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APPENDIX "A"

OPINION OF THE SUPREME COURT OF PENNSYLVANIA

Per Curiam. Filed: December 30, 1959.

John S. Chojnacki, a mentally incompetent veteran, is now and has been confined at Farview State Hospital, Waymart, Pa., since prior to May 5, 1951. On that date Joseph F. Mackrell, Esq., was appointed by the Orphans' Court of Erie County as the guardian of Chojnacki's estate, and from that date until December 31, 1957 the said guardian paid the *full* cost of Chojnacki's care and maintenance at the State Hospital to the Commonwealth of Pennsylvania.

After January 1, 1958 the guardian refused upon demand to pay the *full* cost of Chojnacki's care and maintenance, apparently upon the ground that the Veterans' Administration opposed payments for such purpose in excess of $40.00 per month. On May 15, 1958 the Commonwealth of Pennsylvania petitioned the Orphans' Court of Erie County for an order directing the aforesaid guardian to pay the *full* cost of Chojnacki's care and maintenance. At that time the guardian had in his possession $3,661.62, accumulated by reason of payments by the Veterans' Administration of a non-service-connected disability pension of $78.75 each month. The *full* cost of maintenance of Chojnacki at the State Hospital is $138.00 per month.

Upon presentation of the Commonwealth's petition the court below granted a rule to show cause why such order should not be made with a direction that notice of the presentation of such petition be given to the Veterans' Administration. The Veterans' Administration filed an answer stating, in effect, that the balance of monies in the incompetent's estate over and above payments of $40.00 per month for his care and maintenance was retained in the estate to be used for his "future welfare; to provide for his incidental needs as a patient in the Commonwealth's Hospital, to accumulate a fund to be used for the rehabilitation of the veteran in the event he is discharged from the hospital, and for payment of costs of administration of his estate."

The court below dismissed the Commonwealth's petition and from such order this appeal was taken.

The order is affirmed upon the following excerpts from the opinion of President Judge Roberts of the court below:

"The Commonwealth in this proceeding seeks reimbursement for the full cost of current maintenance of an incompetent veteran as a patient in a state institution. The veteran is the beneficiary of a non-service-connected disability pension from the United States Government, in the monthly amount of $78.75. The full cost of maintenance varies and is now approximately $4.45 a day. Payment at that rate is demanded from the funds in the hands of the guardian. The Veterans' Administration interposes no objection to payment by the guardian of not more than $40.00 a month towards the cost of maintaining the incom-

petent pensioner. It does, however, oppose payment in excess of that amount, contending that the difference between the partial reimbursement to the Commonwealth of $40.00 per month and the veteran's total monthly benefits should be retained in his estate to provide for his incidental needs as a patient, and to accumulate a fund to be used for his future welfare and rehabilitation in the event of his discharge from the Commonwealth's hospital.

* * * * * * * *

"We must now determine whether payment covering the Commonwealth's full cost of currently maintaining the veteran is to be directed from pension funds, in the hands of the guardian. The answer rests upon the unique nature of the fund and the statutory protections accorded such benefits during the lifetime of the veteran. It is clear that pension benefits paid by the Veterans' Administration to a veteran for total non-service-connected disability are a governmental gratuity, and the grant of such allowance to the veteran creates no vested right. The gratuity '. . . may be redistributed or withdrawn at any time in the discretion of Congress:' Lynch vs. U.S., 292 U.S. 571, 577. Careful consideration of the special nature of the gratuity itself and the statutory exemptions created for the protection of such funds during the lifetime of the veteran and the applicable provisions of the regulations of the Veterans' Administration, convinces us that the Commonwealth may not now compel satisfaction of its claim for the full cost of maintenance out of the proceeds of pension funds in the hands of the guardian.

"Both the state and federal governments have assumed certain responsibilities for the welfare of an incompetent veteran. Within their respective exclusive areas each is supreme, and neither may successfully require the other to render services or make contributions beyond those which are lawfully mandated by their respective governing authorities.

"The Commonwealth has undertaken to make available to this incompetent citizen the hospitalization which he is presently receiving. This care he is entitled to receive, irrespective of his inability to make payment and without reference to whether he is the recipient of a federal disability pension. The federal government has and is providing the incompetent veteran with a gratuitous monthly allowance all or any part of which '. . . may, in the discretion of the Administrator, be paid to the chief officer of the institution wherein the veteran is being furnished . . . treatment or care, to be properly accounted for by such chief officer and to be used for the benefit of the veteran.' Pub. L. 85-86, Title XV, Sec. 1503, June 17, 1957, 71 Stat. 137, 38 U.S.C.A. 3502 (b) (3). See also 38 U.S.C.A. 739.

"It is apparent that the Veterans' Administration, in the exercise of its discretion, is vested with the responsibility for determining the amount to be used or paid on account of his maintenance. Here the Veterans' Administration has determined that not more than $40.00 per month shall be so used. The determination of the portion of the monthly gratuity to be used for the pensioner's maintenance is exclusively a federal matter, and when properly made by the Vet-

erans' Administration, is binding upon all concerned. The Commonwealth, through its Department of Welfare, has in effect, acquiesced in this practice. The Secretary of Welfare, by Executive Office Memorandum 1955-29, dated August 1, 1955, a copy of which is annexed, advised superintendents of state mental hospitals to comply with instructions given by the Veterans' Administration '. . . as to the amounts which are to be used solely for the purchase of clothing and incidentals and the amount which may be applied to the cost of care and maintenance'. It should perhaps be noted that while the Secretary's memorandum refers to instances 'Where an incompetent veteran without a guardian is hospitalized in a State mental institution . . .' so far as the payment of cost of care is concerned from federal pension funds, the presence or absence of a guardian is immaterial. In our view, the pension proceeds in the hands of the guardian are no less protected from the claims of creditors than are such funds not subject to guardianship."